PUBLIC PROSECUTOR

v.

YAP HUAT HENG

HIGH COURT MALAYA, KUALA LUMPUR
SHAIK DAUD ISMAIL J
[CRIMINAL APPEAL NO. 8 OF 1985]
13 APRIL 1985

CRIMINAL LAW AND PROCEDURE: *Two charges under s. 376 and two charges under s. 392 read with s. 397 of the Penal Code - Principles of sentencing - Whether sentences to run concurrently or consecutively.*

The respondent was charged in the Sessions Court with two offences punishable under s. 376 of the Penal Code and another two offences punishable under s. 392 read with s. 397 of the Penal Code.

He pleaded guilty to all four charges and was sentenced to three years' imprisonment on each charge. The sentences were ordered to run concurrently. The Public Prosecutor appeals against this sentence and order.

Held:

[1] The fact that the respondent is a first offender and young does not entitle him to be treated with leniency. The need to deter others in the public interest must supersede other considerations. Further, if the respondent is old enough to commit adult offences he should also be deemed to be old enough to take the consequences.

[2] Rape cases are very difficult to prove and rape victims go through traumatic experiences at the time of the offence and at the trial. Once such offence is proved the Courts must and should take a very serious view and impose appropriate deterrent sentences. The public would lose confidence in the Courts if lenient sentences are meted out for such offences.

[3] Where two or more distinct offences had been committed, sentences of imprisonment should not be made to run concurrently. It should only be made concurrent when an offender had been convicted of a principal and a subsidiary offence. In all other cases sentences should be made to run consecutively.

[4] The appeal is allowed and the sentences are enhanced as follows:

(a) for the offences punishable under s. 376 of the Penal Code, the respondent is sentenced to imprisonment for 5 years plus 3 strokes of the rotan and 8 years plus 3 strokes of the rotan. Both these sentences are to run consecutively.

(b) for the two offences punishable under s. 392 read with s. 397 of the Penal Code, the respondent is sentenced to 5 years on each charge and these sentences are to run concurrently with the sentences for the first two offences.

[Appeal allowed.]

Case referred to:
Tan Bok Yeng v. PP [1972] 1 MLJ 214

Legislation referred to:
Penal Code, ss. 376, 392, 397

For the public prosecutor - Tan Hock Chuan (DPP)
For the respondent - in person

JUDGMENT

Shaik Daud Ismail J:

This is an appeal by the learned Public Prosecutor against sentence imposed by the Kuala Lumpur Sessions Court. The respondent Yap Huat Heng was charged as follows:

1st charge:

> Bahawa kamu pada 17 March 1983 di antara jam 11.00 malam dengan 12.00 tengah malam di rumah No. 889, Jalan Kuchai Lama, Kuala Lumpur, di dalam Wilayah Persekutuan telah melakukan rogol ke atas seorang perempuan bernama Ng Lai Kuen KP: No. A. 0350541 berumur 17 tahun, dan olih yang demikian kamu telah melakukan satu kesalahan yang bolih dihukum di bawah Seksyen 376 Keseksaan.

2nd, charge:

> Bahawa kamu pada 17 March 1983 di antara jam 11.00 malam dengan 12.00 tengah malam di rumah No. 889, Jalan Kuchai Lama, Kuala Lumpur di dalam Wilayah Persekutuan telah melakukan rogol ke atas seorang perempuan bernama Ng Lee Yen KP: No. A. 1507389 berumur 13 tahun, dan olih yang demikian kamu telah melakukan kesalahan yang bolih dihukum di bawah Seksyen 376 Kanun Keseksaan.

3rd charge:

> Bahawa kamu pada 17 March 1983 jam lebih kurang 11.00 malam di rumah No. 889, Jalan Kuchai Lama, Happy Garden, Kuala Lumpur di dalam Wilayah Persekutuan Dengan Niat Bersama di bawah Seksyen 34 Kanun Keseksaan telah samun seorang perempuan Ng Lai Kuen KP: A. 0350541, barang-barang kemas iaitu 1 rantai dan cincin emas berharga RM280.00 dan dimasa melakukan samun itu kamu telah menggunakan senjata tajam, dan dengan itu kamu telah melakukan satu kesalahan yang bolih dihukum di bawah Seksyen 392 dan 397 Kanun Keseksaan."

4th charge:

> Bahawa kamu pada 17 March 1983 jam lebih kurang 11.00 malam di rumah No. 889, Jalan Kuchai Lama, Happy Garden, Kuala Lumpur di dalam Wilayah Persekutuan Dengan Niat Bersama di bawah Seksyen 34 Kanun Keseksaan telah samun seorang perempuan Ng Lee Yen KP: A. 1507389. Barang-barang iaitu 1 rantai dan 1 cincin berwarna emas berharga RM21.00, dan di masa melakukan samun itu kamu telah menggunakan senjata tajam, dan dengan itu kamu telah melakukan satu kesalahan yang bolih dihukum di bawah Seksyen 392 dan 397 Kanun Keseksaan.

On 2 January 1985 the respondent pleaded guilty to all four charges. After hearing the facts and plea in mitigation, the learned President sentenced the respondent to three years' imprisonment on each of the charges and ordered the sentences to run concurrently. In other words for all the four offences the respondent was sentenced to three years. It is against this sentence and order that learned Public Prosecutor now appealed.

The facts of the four charges as adduced at the lower Court are that on 17 March 1983 at about 11.00 p.m. while the complainant aged 17 years old and her sister aged 13 years old were in their home at No. 889, Happy Garden, off Jalan Kuchai Lama, Kuala Lumpur, four male persons forced themselves into the house. The respondent was one of the four persons.

They then threatened and robbed the complainant and her sister of their jewelleries and cash valued at RM341.00 in total. After that each of the four persons including the respondent took turns and raped both the complainant and her sister. Having satisfied themselves they then left the house. Complainant and her sister later lodged a report.

As a result of information received the police on 18 March 1983 arrested the four suspects who were later identified by complainant and her sister. The police also recovered some jewelleries robbed from both complainant and her sister. All four including respondent were charged. The 3 others had been dealt with earlier.

Punishment in each and every case is one that is dependant upon the view the presiding Magistrate takes of the facts that had been given both for the prosecution and for the defence. Even in cases where the facts are almost similar or identical one often finds sentences are not so. I must, therefore, in this particular case decide whether the learned President in dealing with the offences had failed to consider the gravity of the offences and the circumstances in the manner in which they were committed as well as the public interest.

The respondent or any other offender may be a first offender and young but those factors alone does not entitle him to be treated with leniency. To my mind the need to deter others in the public interest must supersede other considerations. As is well known rape cases are very difficult to prove, and rape victims especially young victims, go through traumatic experience at the time of the offence and later, and also at the trial more often than not they become the accused rather than the accuser. In view of this, to my mind, once such offence is proved the Courts must and should take very serious view and impose appropriate deterrent sentences. The public would lose confidence in the Courts if lenient sentences are meted out for such offences.

I have carefully considered the circumstances in which these offences were committed and in my view nothing could mitigate what the respondent and his friends did to both the girls. Not being satisfied in robbing them at knife point which in itself is serious enough, they then took turns and raped both their victims one by one. The second victim was then only 13 years old. According to the medical report they even passed on an infection on her.

What could possibly mitigate this? The fact that respondent is a first offender and young? I feel that if he is old enough to commit adult offences he should also be deemed to be old enough to take the consequences.

Here I would like to echo what the late Justice Sharma said on sentencing young and first offenders in *Tan Bok Yeng v. PP* [1972] 1 MLJ 214 and I quote:

> I am quite aware that the law does provide for a lesser sentence or no sentence at all imposed upon persons of young age. There is however, emerged in recent years in our society certain species of crimes which the alacrity of mind and body, the dare, dash and defiance of the youth alone is capable of performing and producing. Law cannot, in my view, remain merely a static and a meaninglessly passive, if ornamental and an orthodox instrument of justice, ineffective in its result and application. The social needs of the times have to be met and effectively met. It is not merely the correction of the offender which is the prime object of punishment. The considerations of public interest have also to be borne in mind. In certain types of offences a sentence has got to be deterrent so that others who are like-minded may be restrained from becoming a menace to society.

In certain specific offences the Courts should not place too much emphasis on the fact that the offender is young and a first timer. Public interest demands that in such cases a deterrent sentence ought to be given.

In the circumstances of the present case I am in full agreement with the submission of the learned Deputy Public Prosecutor that the sentence imposed by the learned President was not only manifestly inadequate but also wrong in law. Where two or more distinct offences had been committed, sentences of imprisonment should not be made to run concurrently. It should only be made concurrent when an offender had been convicted of a principal and a subsidiary offence. In all other cases sentences should be made to run consecutively.

In the present case the respondent had been convicted of committing two distinct offences of rape on two separate persons and in the light of that a sentence of 3 years on each charge to be made concurrent is wrong in law.

I would therefore allow the appeal and enhance the sentence as follows:

> On the 1st charge respondent is sentenced to imprisonment for a period of five (5) years plus three (3) strokes of the rotan and on the 2nd charge to eight (8) years plus three (3) strokes of the rotan. Both these sentences are to run consecutively. As for the 3rd and 4th charges, respondent is sentenced to five (5) years on each charge and this sentence is to run concurrently with the sentences on the 1st and 2nd charges.

Also found at [1986] 1 CLJ 81